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7 TODD CROWDER, et al.,  
8 Plaintiffs,  
9 v.  
10 LINKEDIN CORPORATION,  
11 Defendant.

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Case No. [22-cv-00237-HSG](#)

**ORDER DENYING MOTION TO  
DISMISS AND GRANTING IN PART  
AND DENYING IN PART MOTIONS  
TO SEAL**

Re: Dkt. Nos. 73, 84, 85, 91

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13 Before the Court are Defendant's motion to dismiss, the parties' administrative motions to  
14 seal, and a non-party's motion to seal. Dkt. Nos. 73, 84, 85, 91. The Court held a hearing on the  
15 motion to dismiss. Dkt. No. 77. The Court **DENIES** the motion to dismiss and **GRANTS IN**  
16 **PART AND DENIES IN PART** the motions to seal.

17 **I. BACKGROUND**

18 Plaintiffs filed the first amended complaint ("FAC") after the Court granted Defendant's  
19 motion to dismiss their initial complaint. *See* Dkt. No. 65.

20 This is an antitrust proposed class action against LinkedIn, an online social network that  
21 focuses on professional connections. *See* FAC ¶¶ 1, 30. Plaintiffs subscribe to LinkedIn Premium  
22 Career, which provides paying users with additional features. *Id.* ¶¶ 21–23. Plaintiffs assert that  
23 LinkedIn has a monopoly in the professional social networking market, allowing it to overcharge  
24 Premium subscribers. *Id.* ¶¶ 20, 421, 446–456. Plaintiffs allege that LinkedIn's monopoly is  
25 protected by a powerful barrier to market entry comprising LinkedIn's "data centralization,  
26 machine learning models, and resulting trove of inferred data." *Id.* ¶¶ 182. This barrier allegedly  
27 prevents would-be rivals from entering the market, because "[w]ithout these three components, a  
28 new entrant could not viably compete with LinkedIn." *Id.* ¶ 183. Defendant allegedly strengthens

1 this barrier and maintains its monopoly through two categories of anticompetitive conduct. *Id.* ¶  
2 232–33. First, Defendant sells private user data through application programming interfaces  
3 (“API”) to exclusive third parties called “partners.” *Id.* ¶¶ 234–78. Second, Defendant integrated  
4 its user data with Microsoft’s Azure cloud computing system. *Id.* ¶¶ 279–325. Plaintiffs bring  
5 claims under Section 2 of the Sherman Act for monopolization and attempted monopolization. 15  
6 U.S.C. § 2; FAC ¶¶ 438–57.

## 7 **II. LEGAL STANDARD**

8 Federal Rule of Civil Procedure 8(a) requires that a complaint contain “a short and plain  
9 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A  
10 defendant may move to dismiss a complaint for failing to state a claim upon which relief can be  
11 granted under Federal Rule of Civil Procedure 12(b)(6). “Dismissal under Rule 12(b)(6) is  
12 appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support  
13 a cognizable legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th  
14 Cir. 2008). To survive a Rule 12(b)(6) motion, a plaintiff need only plead “enough facts to state a  
15 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).  
16 A claim is facially plausible when a plaintiff pleads “factual content that allows the court to draw  
17 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*,  
18 556 U.S. 662, 678 (2009).

19 In reviewing the plausibility of a complaint, courts “accept factual allegations in the  
20 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.”  
21 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Nevertheless,  
22 courts do not “accept as true allegations that are merely conclusory, unwarranted deductions of  
23 fact, or unreasonable inferences.” *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir.  
24 2008) (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)).

25 If the court concludes that a 12(b)(6) motion should be granted, the “court should grant  
26 leave to amend even if no request to amend the pleading was made, unless it determines that the  
27 pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d  
28 1122, 1127 (9th Cir. 2000) (en banc) (quotation omitted).

### 1 III. DISCUSSION

#### 2 A. Section 2 Liability for Monopolization

3 Under Section 2 of the Sherman Act, it is unlawful to “monopolize, or attempt to  
4 monopolize . . . any part of the trade or commerce among the several States . . . .” 15 U.S.C. § 2.  
5 To establish Section 2 liability, a plaintiff must show: (1) possession of monopoly power in the  
6 relevant market; (2) willful acquisition or maintenance of that power; and (3) causal antitrust  
7 injury. *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974, 990 (9th Cir. 2020).

##### 8 i. Anticompetitive Conduct

9 Defendant argues that Plaintiffs’ FAC should be dismissed because they have not  
10 adequately alleged that LinkedIn engaged in “anticompetitive” conduct. Anticompetitive conduct  
11 is “the use of monopoly power to foreclose competition, to gain a competitive advantage, or to  
12 destroy a competitor.” *Image Tech. Servs., Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1208 (9th  
13 Cir. 1997) (quotation omitted). Put another way, anticompetitive conduct is “behavior that tends  
14 to impair the opportunities of rivals and either does not further competition on the merits or does  
15 so in an unnecessarily restrictive way.” *Cascade Health Sols. v. PeaceHealth*, 515 F.3d 883, 894  
16 (9th Cir. 2008). “[B]ehavior that might otherwise not be of concern to the antitrust laws—or that  
17 might even be viewed as procompetitive—can take on exclusionary connotations when practiced  
18 by a monopolist.” *Image Tech. Servs., Inc.*, 125 F.3d at 1217 (quotation omitted).

##### 19 a. API Agreements

20 The first category of alleged anticompetitive conduct is that Defendant provided access to  
21 its private user data to “hand-selected partners” only after the partners “promise[d] not to compete  
22 with LinkedIn.” Opp at 12; FAC ¶¶ 234–52. The FAC describes APIs as interfaces that allow  
23 developers to request and receive information from LinkedIn, and as a way “for developers to  
24 build apps that could interact with LinkedIn’s network of professionals.” FAC ¶¶ 166–73.  
25 Plaintiffs allege that in 2015, LinkedIn stopped offering general access to its APIs and began  
26 requiring developers to apply and register to become API “partners.” *Id.* ¶¶ 173–80. Plaintiffs  
27 assert that Defendant leveraged those Private APIs to prevent potential competitors from entering  
28 the market. *Id.* ¶ 180. According to Plaintiffs, Defendant did this “through anticompetitive

1 agreements with hand-selected ‘partners,’ requiring that each partner agree not to compete with  
2 LinkedIn in exchange for access to LinkedIn user data through LinkedIn’s Private APIs.” *Id.*

3 Defendant contends that these allegations are fatally speculative because “Plaintiffs have  
4 no plausible factual support for their non-compete arguments.” Mot. at 8. Defendant argues that  
5 Plaintiffs’ theory relies solely on “on an irrelevant, unverified, vague, and speculative 2019 blog  
6 post.” *Id.* That blog post states:

7 LinkedIn has a number of APIs, there’s the Profile-API for getting  
8 users profiles and there’s the Profile-Edit-API which can be used to  
9 send a patch of the user’s profile to update the content. In order to use  
10 the Profile-Edit-API you need to have the w\_compliance permission  
11 associated with your app. The w\_compliance permission is gained via  
12 LinkedIn’s partner program where an app that promises not to  
13 compete with LinkedIn or abuse the API can gain access to more data.

14 FAC ¶ 241. Defendant argues that Plaintiffs’ reliance solely on this “unverified source” makes  
15 their API non-compete claim implausibly pled. Mot. at 9.

16 The Supreme Court and Ninth Circuit have found competitors’ agreements not to compete  
17 with one another in a market to be anticompetitive. *See Otter Tail Power Co. v. U.S.*, 410 U.S.  
18 366, 377 (1973) (“Use of monopoly power ‘to destroy threatened competition’ is a violation of the  
19 ‘attempt to monopolize’ clause of [§]2 of the Sherman Act,” as are “agreements not to compete,  
20 with the aim of preserving or extending a monopoly”); *Optronic Techs., Inc. v. Ningbo Sunny Elec*  
21 *Co.*, 20 F.4th 466, 481 (9th Cir. 2021) (describing agreement between horizontal competitors  
22 either not to compete in a market or to divide customers or potential customers between them as  
23 “illegal market allocation, which is a *per se* Section 1 violation”) (citing *Palmer v. BRG Georgia,*  
24 *Inc.*, 498 U.S. 46, 49 (1990)). To sustain a Section 2 claim, a plaintiff must also adequately allege  
25 that a defendant’s conduct harmed competition. *Dreamstime.com, LLC v. Google LLC*, 54 F.4th  
26 1130, 1143 (9th Cir. 2022) (affirming dismissal of Section 2 claim for failure to adequately plead  
27 harm to competition); *see also Kentmaster Mfg. Co. v. Jarvis Products Corp.*, 146 F.3d 691, 695  
28 (9th Cir. 1998) (finding failure to allege harm to competition to be fatal to Section 2 claims).

29 Plaintiffs have adequately alleged anticompetitive conduct. The FAC alleges that “[t]he  
30 Private APIs require that selected API Partners agree not to compete with LinkedIn, including by  
31 creating a rival product. Upon agreement, a LinkedIn partner obtains access to programmatic

1 permissions to access private LinkedIn user data.” FAC ¶ 240. Plaintiffs plead that “an app that  
2 promises not to compete with LinkedIn . . . can gain access to more data.” *Id.* ¶ 241. According  
3 to Plaintiffs, Defendant selects API partners that pose a significant threat to its business as a means  
4 to foreclose entry by actual or potential rivals. *Id.* ¶ 238. Plaintiffs identify some of Defendant’s  
5 API partners and allege that these companies, but for signing API agreements, would be well  
6 positioned to compete with Defendant. These facts adequately allege that Defendant entered into  
7 non-compete agreements which work to “impair the opportunities of rivals and [] do not further  
8 competition.”<sup>1</sup> *Cascade Health Sols.*, 515 F.3d at 894.

9 Defendant’s fact-based arguments regarding the credibility of the blog post do not change  
10 the Court’s conclusion that Plaintiffs have adequately alleged anticompetitive conduct.  
11 Defendant argues that “(1) a blog post (2) by a non-rival (3) stating that the API agreement he  
12 never saw (4) contained an undefined non-compete provision is nothing but unfounded, irrelevant  
13 speculation insufficient to support Plaintiffs’ API claim.” Mot. at 10. But this argument invites  
14 the Court to construe the allegations in the complaint in Defendant’s favor. Plaintiffs have pled  
15 facts supporting a cognizable legal theory: Defendant requires would-be competitors to agree not  
16 to compete with it in the professional social networking market, and these potential competitors  
17 receive valuable data in exchange for this commitment. Whether this theory bears out factually is  
18 for a later stage, but Plaintiffs have adequately alleged it.<sup>2</sup>

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20 <sup>1</sup> At the Court’s direction, Defendant produced certain private API agreements to Plaintiffs. *See*  
21 Dkt. No. 78. In connection with their supplemental briefs, the parties submitted these agreements.  
22 *See* Dkt. Nos 85, 86, 88. As explained at the end of this order, the Court finds that the agreements  
23 cannot change the outcome of the pending motion to dismiss given the allegations in the FAC.  
24 That said, once the Court *can* consider the substance of the agreements, such as on a motion for  
summary judgment, it seems plain that at least the agreements proffered so far simply do not  
contain the sort of outright agreement not to compete that is alleged in the FAC. Given this  
seeming mismatch, the Court will consider whether an early summary judgment motion on this  
point may be warranted.

25 <sup>2</sup> According to the FAC, API partners are both Defendant’s potential competitors (in that they are  
26 primed to enter the professional social networking market) and customers (in that they purchase  
data from Defendant). As such, there is some ambiguity as to whether the API agreements are  
27 vertical or horizontal restraints. *See* Dkt. No. 81 (“Hrg. Tr.”) at 27:1–11. But at this stage it is  
enough that Plaintiffs have alleged that the API partners are viable potential competitors, and  
Defendant entered into agreements with them for the purpose of restraining competition and  
enabling Defendant to charge supracompetitive prices. *See Gatan, Inc. v. Nion Co.*, Case No. 15-  
28 cv-01862-PJH, 2017 WL 3478837, at \*5 (N.D. Cal. Aug. 14, 2017) (“Because Nion was both a

1 Plaintiffs have also adequately alleged harm to competition. The harm to competition  
2 analysis “need not always be extensive or highly technical.” *Epic Games, Inc. v. Apple, Inc.*, 67  
3 F.4th 946, 983 (9th Cir. 2023); *see also Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc.*, 627 F.2d  
4 919, 924 (9th Cir. 1980) (“There is no special rule requiring more factual specificity in antitrust  
5 pleadings.”). Instead, a plaintiff may allege that defendant “increases barriers to entry or reduces  
6 consumer choice by excluding would-be competitors that would offer differentiated products.”  
7 *Epic Games*, 67 F.4th at 983–84.

8 Here, Plaintiffs allege that absent the non-compete agreements, “competitors would enter  
9 LinkedIn’s market and erode its profits and market share with price competition.” FAC ¶ 3.  
10 According to Plaintiffs, because of the exclusionary APIs, Defendant has no competitors, and  
11 premium subscribers “cannot obtain any of the additional services” because “no comparable  
12 products” exist. *Id.* ¶ 375. Plaintiffs claim that but for the non-compete agreements, there would  
13 be greater price competition in the premium product market that Defendant currently monopolizes.  
14 The FAC pleads that Defendant “charges premium subscription prices that range from \$29.99 to  
15 \$99.95,” and that “[n]o general social networks provide comparable subscription products that  
16 enhance a user’s ability to access information about others on the social network.” *Id.* ¶ 376.  
17 According to Plaintiffs, Defendant enjoys “unheard of” price stability because they have “no  
18 competitive check.” *Id.* ¶ 379. Together, these allegations adequately plead harm to competition.<sup>3</sup>

19 In sum, Plaintiffs have plausibly alleged that Defendant’s entry into the API agreements  
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21 customer and a potential competitor of Gatan, it is not clear at this stage whether the Agreement  
22 should be considered a vertical or horizontal restraint. But the court need not decide whether the  
23 rule of reason applies to the Agreement, or weigh its pro- and anti-competitive effects, at the  
24 pleading stage. It is enough that Nion plausibly alleges that the Agreement restrains trade, and a  
25 potential competitor’s promise not to make a competing product limits competition.”) (citations  
26 omitted).

27 <sup>3</sup> Defendant also argues that Plaintiffs are asserting an exclusive dealing claim, which necessitates  
28 pleading substantial foreclosure. Reply at 5. At the hearing, Plaintiffs’ counsel directly confirmed  
29 that they are not pursuing an exclusive dealing theory. Hrg. Tr. 18:21-23 (answering “That’s  
30 absolutely correct, Your Honor” when asked “I assume that your position is that you’re not  
31 bringing any sort of tying or exclusive-dealing claim here[?]”). Given this concession, the Court  
32 agrees that a claim of market foreclosure is not necessary to adequately allege anticompetitive  
33 conduct. *See Bay Area Surgical Management LLC v. Aetna Life Insurance Co.*, 166 F.Supp.3d  
34 988, 997-98 (N.D. Cal. 2015).

1 constitutes anticompetitive conduct and have pled an associated harm to competition. Plaintiffs  
2 thus adequately plead a Section 2 monopolization claim, and Defendant's motion to dismiss this  
3 claim is DENIED.<sup>4</sup>

4 **ii. Attempted Monopolization**

5 Defendant argues that even if Plaintiffs' monopolization claim survives, their attempted  
6 monopolization claim should be dismissed because "it does not allege that LinkedIn possessed a  
7 'specific intent to control prices or destroy competition.'" Mot. at 18. Plaintiffs do not argue that  
8 they directly plead specific intent, but instead contend that "[i]ntent can be inferred where, as here,  
9 anticompetitive conduct 'form[s] the basis for a substantial claim of restraint of trade' or is  
10 'clearly threatening to competition or clearly exclusionary.'" Opp. at 24.

11 A Section 2 attempted monopolization claim requires proof of three elements: "(1) specific  
12 intent to monopolize a relevant market; (2) predatory or anticompetitive conduct; and (3) a  
13 dangerous probability of success." *Optronic Techs.*, 20 F.4th at 481–82. All three elements may  
14 be proved with evidence of either: (1) conduct forming the basis for a substantial claim of restraint  
15 of trade, or (2) conduct that is clearly threatening to competition or clearly exclusionary. *Twin*  
16 *City Sportservice, Inc. v. Charles O Finley & Co., Inc.*, 676 F.2d 1291, 1309 (9th Cir. 1982).  
17 "[W]hile the three elements are discrete, they are often interdependent; i.e., proof of one of the  
18 three elements may provide circumstantial evidence or permissible inferences of the other  
19 elements." *Id.* at 1308. An attempted monopoly violation can be found based on evidence of  
20 conduct alone. *Id.* at 1309.

21 Plaintiffs' attempted monopolization claim is predicated on the same alleged  
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23 <sup>4</sup> Given the Court's conclusion that Plaintiffs' API theory adequately alleges anticompetitive  
24 conduct and harm to competition to support the Section 2 monopolization claim, the Court need  
25 not address the alternative Azure integration and "monopoly broth" theories of liability. *See Aya*  
26 *HealthCare Servs., Inc. v. AMN Healthcare, Inc.*, No. 17-cv-205-MMA (MDD), 2018 WL  
27 3032552 \*at 8 & n.7 (S.D. Cal. June 19, 2018) ("In light of the Court's conclusion that Plaintiffs  
28 have sufficiently alleged antitrust injury, the Court need not address Plaintiffs' third theory of  
antitrust injury mentioned in Plaintiffs' opposition to the instant motion."). The Court can address  
what the import of these additional theories might be on summary judgment or at trial. *See Opp.*  
at 23 ("Finally, whether the Azure integration can stand alone under Section 2 or not, LinkedIn's  
Azure migration is nevertheless actionable as part of a 'monopoly broth' that includes the private  
API agreements.")

1 anticompetitive conduct as their monopolization claim, and is sufficiently pled for the same  
2 reasons. *See LiveUniverse, Inc. v. MySpace, Inc.*, 304 F. App'x 554, 557 (9th Cir. 2008)  
3 (explaining that attempted monopolization requires pleading the same elements as a  
4 monopolization claim).<sup>5</sup> Plaintiffs have adequately pled that Defendant's API agreements  
5 excluded would-be competitors from the market. This allegedly allowed Defendant to enjoy  
6 "unheard of" levels of pricing with "no competitive check." At this stage, Defendant's alleged  
7 exclusion of competitors sufficiently pleads anticompetitive conduct supporting an inference of  
8 specific intent to destroy competition. Accordingly, Defendant's motion to dismiss Plaintiffs'  
9 attempted monopolization claim is DENIED.

10 **IV. JUDICIAL NOTICE**

11 **A. Legal Standard**

12 In *Khoja v. Orexigen Therapeutics*, the Ninth Circuit addressed the judicial notice rule and  
13 incorporation by reference doctrine. *See* 899 F.3d 988 (9th Cir. 2018). Under Federal Rule of  
14 Evidence 201, a court may take judicial notice of a fact "not subject to reasonable dispute because  
15 it ... can be accurately and readily determined from sources whose accuracy cannot reasonably be  
16 questioned." Fed. R. Evid. 201(b)(2). Accordingly, a court may take "judicial notice of matters of  
17 public record," but "cannot take judicial notice of disputed facts contained in such public records."  
18 *Khoja*, 899 F.3d at 999 (citation and quotations omitted). The Ninth Circuit has clarified that if a  
19 court takes judicial notice of a document, it must specify what facts it judicially noticed from the  
20 document. *Id.* at 999. Further, "[j]ust because the document itself is susceptible to judicial notice  
21 does not mean that every assertion of fact within that document is judicially noticeable for its  
22 truth." *Id.* As an example, the Ninth Circuit held that for a transcript of a conference call, the  
23 court may take judicial notice of the fact that there was a conference call on the specified date, but  
24 may not take judicial notice of a fact mentioned in the transcript, because the substance "is subject  
25 to varying interpretations, and there is a reasonable dispute as to what the [document] establishes."  
26 *Id.* at 999–1000.

27  
28 <sup>5</sup> As an unpublished memorandum disposition, *LiveUniverse* is not precedent, but the Court may  
consider it for its persuasive value. Fed. R. App. P. 32.1; CTA9 Rule 36-3.

1 Separately, the incorporation by reference doctrine is a judicially-created doctrine that  
2 allows a court to consider certain documents as though they were part of the complaint itself. *Id.*  
3 at 1002. This is to prevent plaintiffs from cherry-picking certain portions of documents that  
4 support their claims, while omitting portions that weaken their claims. *Id.* Incorporation by  
5 reference is appropriate “if the plaintiff refers extensively to the document or the document forms  
6 the basis of plaintiff’s claim.” *Khoja*, 899 F.3d at 1002. However, “the mere mention of the  
7 existence of a document is insufficient to incorporate the contents” of a document. *Id.* at 1002.  
8 And while a court “may assume [an incorporated document’s] contents are true for purposes of a  
9 motion to dismiss … it is improper to assume the truth of an incorporated document if such  
10 assumptions only serve to dispute facts stated in a well-pleaded complaint.” *Id.*

## B. Defendant's Request

12 As part of its motion to dismiss, Defendant requests that the court take judicial notice of  
13 the following documents:

1. A copy of the API related blog post that Plaintiffs quote in their complaint, at <https://medium.com/swlh/the-frustrations-of-dealing-with-the-linkedin-api-747147c95eac>, Dkt. No. 73-2, Ex. A.
2. A copy of a publicly accessible website discussing API agreements that Plaintiffs quote in their complaint, Dkt. No. 73-3, Ex. B.

19           Websites and their contents may be proper subjects for judicial notice. *See Threshold*  
20 *Enterprises Ltd. v. Pressed Juicery, Inc.*, 445 F. Supp. 3d 139, 146 (N.D. Cal. 2020) (collecting  
21 cases); *Wible v. Aetna Life Ins. Co.*, 374 F. Supp. 2d 956, 965 (C.D. Cal. 2005) (recognizing that  
22 “websites and their contents may be proper subjects for judicial notice” where party “supplied the  
23 court with hard copies of the actual web pages of which they sought to have the court take judicial  
24 notice”).

25           Further, under the doctrine of incorporation by reference, the Court may consider  
26 documents whose contents are alleged in the complaint, provided the complaint “necessarily  
27 relies” on the documents, the document’s authenticity is uncontested, and the document’s  
28 relevance is uncontested. *See Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010);

1        *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (“Even if a document is not attached to  
2 a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively  
3 to the document or the document forms the basis of the plaintiff’s claim.”). “The defendant may  
4 offer such a document, and the district court may treat such a document as part of the complaint,  
5 and thus may assume that its contents are true for purposes of a motion to dismiss under Rule  
6 12(b)(6).” *Ritchie*, 342 F.3d at 908.

7            Here, Exhibits A and B are copies of web pages, and Plaintiffs expressly cite to them at  
8 length in the FAC. *See* FAC ¶¶ 241, 246. In their opposition, Plaintiffs do not object to  
9 Defendant’s request for judicial notice and rely on the blog post website themselves in that brief.  
10 *See* Dkt. No. 74 at 6–7. Therefore, the Court **GRANTS** Defendant’s request for judicial notice of  
11 Exhibits A and B.

12            As discussed above in footnote 1, the parties also submitted the private API agreements  
13 that Defendant produced in discovery. *See* Dkt. Nos 85, 86, 88. The Court directed counsel to  
14 indicate whether they agreed that the Court may take judicial notice of those agreements in  
15 deciding the motion to dismiss. Dkt. No. 92. Defendant argues that because the API agreements  
16 were referenced in the FAC and form the basis of Plaintiffs’ claims, they should be considered  
17 incorporated by reference. Dkt. Nos. 85, 93. Plaintiffs argue that the Court may take judicial  
18 notice of only the undisputed facts related to the API agreements (for example, that 18 agreements  
19 were submitted and “that they contain the words they contain”). Dkt. No. 94. Plaintiffs’ position  
20 is that the Court may not take judicial notice of the agreements to determine what they  
21 characterize as disputed facts (such as the overall content and effect of the agreements). *Id.*

22            The key question is what use the Court can properly make of these documents at the  
23 motion to dismiss stage. The FAC indisputably refers repeatedly to, and characterizes, “Private  
24 API Agreements.” *See, e.g.*, FAC ¶ 234-252. And the parties agree that the documents they have  
25 submitted are at least some of the agreements that are at issue in the case. *See* Dkt. No. 94 at 2  
26 (Plaintiffs’ acknowledgment that “there appears to be no dispute between the parties that the  
27 documents attached to Dkt. No. 85 are what they purport to be—eighteen LinkedIn private API  
28 agreements with four named counterparties”). So while the FAC does not granularly describe

1 these particular agreements, Plaintiffs agree that “the Court may look at the terms of these  
2 documents to evaluate Plaintiffs’ claims in adjudicating LinkedIn’s motion to dismiss.” *Id.*

3 But even assuming the Court finds these documents to be incorporated by reference or  
4 judicially noticeable, it agrees with Plaintiffs that it cannot rely on them to contradict the  
5 allegations in the FAC. *See Khoja*, 899 F.3d at 1002 (explaining that “it is improper to assume the  
6 truth of an incorporated document if such assumptions only serve to dispute facts stated in a well-  
7 pleaded complaint”); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (finding that  
8 district court erred in taking judicial notice of disputed matters contained in public documents). It  
9 is undisputed that additional relevant API agreements have not yet been produced (which is  
10 understandable given the limited scope of the Court’s order directing targeted disclosure of certain  
11 agreements). Dkt. No. 78. And one of the central issues in dispute in this case is the meaning of  
12 the clauses describing the conditions to which API partners agreed in receiving LinkedIn’s data.  
13 The Court cannot resolve these interpretation disputes in Defendant’s favor at this stage. *See In re*  
14 *Juul Labs, Inc., Antitrust Litigation*, 555 F.Supp.3d 932, 968 (N.D. Cal. 2021) (finding segments  
15 of alleged agreement incorporated by reference based on repeated citation to them in the  
16 complaint, but finding that the court “cannot and do[es] not resolve the parties’ disputes over what  
17 certain provisions in those documents mean,” given that “the parties argue[d] the provisions mean  
18 different things on their face or in the context of the other written and unwritten agreements and  
19 communications between [them]”). Accordingly, while it acknowledges the existence and content  
20 of the agreements, the Court finds that they do not change its analysis above finding that Plaintiffs  
21 have adequately pled a Section 2 and attempted monopolization claims sufficient to survive a  
22 motion to dismiss.

23 **V. MOTIONS TO SEAL**

24 **A. Legal Standard**

25 Courts generally apply a “compelling reasons” standard when considering motions to seal  
26 documents related to the merits of a case. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th  
27 Cir. 2010) (quoting *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)).  
28 “This standard derives from the common law right ‘to inspect and copy public records and

1 documents, including judicial records and documents.”” *Id.* (quoting *Kamakana*, 447 F.3d at  
2 1178). “[A] strong presumption in favor of access is the starting point.” *Kamakana*, 447 F.3d at  
3 1178 (quotations omitted). To overcome this strong presumption, the party seeking to seal a  
4 judicial record attached to a dispositive motion must “articulate compelling reasons supported by  
5 specific factual findings that outweigh the general history of access and the public policies  
6 favoring disclosure, such as the public interest in understanding the judicial process” and  
7 “significant public events.” *Id.* at 1178–79 (quotations omitted). “In general, ‘compelling reasons’  
8 sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist  
9 when such ‘court files might have become a vehicle for improper purposes,’ such as the use of  
10 records to gratify private spite, promote public scandal, circulate libelous statements, or release  
11 trade secrets.” *Id.* at 1179 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).  
12 “The mere fact that the production of records may lead to a litigant’s embarrassment,  
13 incrimination, or exposure to further litigation will not, without more, compel the court to seal its  
14 records.” *Id.*

15 The Court must “balance[ ] the competing interests of the public and the party who seeks  
16 to keep certain judicial records secret. After considering these interests, if the court decides to seal  
17 certain judicial records, it must base its decision on a compelling reason and articulate the factual  
18 basis for its ruling, without relying on hypothesis or conjecture.” *Id.* Civil Local Rule 79-5  
19 supplements the compelling reasons standard set forth in *Kamakana*: the party seeking to file a  
20 document or portions of it under seal must “establish[ ] that the document, or portions thereof, are  
21 privileged, protectable as a trade secret or otherwise entitled to protection under the law,” and  
22 “[t]he request must be narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-  
23 5(b).

24 **B. Parties’ Motions Regarding Sealing**

25 The parties’ sealing motions concern the API agreements themselves as well as references  
26 to them in some of the briefs. Because the documents attached to the motion to dismiss are more  
27 than tangentially related to the merits of the case, the Court applies the compelling reasons  
28 standard.

1        “[Defendant] is not itself moving to seal these documents based on LinkedIn’s own  
2 confidential business information.” Dkt. No. 85 at 1. Instead, Defendant filed its motion “solely  
3 to accommodate third parties—the API Partners—with the opportunity to evaluate whether  
4 anything in these agreements should remain sealed.” *Id.* Defendant accordingly framed its  
5 request as a motion to consider whether these non-parties’ material should be sealed.

6        Only non-party Hootsuite, Inc. filed a statement in response to the motion, seeking to  
7 maintain under seal portions of the information identified by Defendant. *See* Dkt. No. 91.  
8 Hootsuite “only seeks to seal limited portions of these exhibits . . . that relate[] to terms that  
9 describe the technology behind Hootsuite’s product and its product structure, which could  
10 disadvantage it with its competitors.” *Id.* The Court finds this targeted request appropriate and  
11 **GRANTS** the motions with respect to Hootsuite’s documents and references to them because the  
12 proposed redactions seek to seal only sensitive confidential business information. *See Baird v.*  
13 *BlackRock Institutional Tr., N.A.*, 403 F.Supp.3d 765, 792 (N.D. Cal. 2019) (“[C]onfidential  
14 business information in the form of license agreements, financial terms, details of confidential  
15 licensing negotiations, and business strategies satisfies the compelling reasons standard.”)  
16 (internal quotations omitted).

17        The motions are otherwise **DENIED** with respect to all other third-party agreements given  
18 that no party or nonparty has presented a basis for sealing them (or references to them). *See* Civil  
19 L.R. 79-5(f).

20        **VI. CONCLUSION**

21        The Court **DENIES** Defendant’s motion to dismiss. *See* Dkt. No. 73. Accordingly, the  
22 Court also **LIFTS** the discovery stay. *See* Dkt. No. 64.

23        The Court **GRANTS IN PART and DENIES IN PART** the parties’ requests to determine  
24 whether another party’s material should be sealed. *See* Dkt. Nos. 84, 85. Sealing is **GRANTED**  
25 as to the materials specified by non-party Hootsuite in Dkt. No. 91-1 and **DENIED** otherwise.

26        The Court **DIRECTS** the parties to file public versions of all documents for which the  
27 proposed sealing has been denied within ten days from the date of this order. Only the specific  
28 information related to Hootsuite may be redacted. Each party is responsible for submitting these

1 conforming versions of any document that it originally filed unless the parties mutually agree on a  
2 different allocation of this work.

3 The Court further **SETS** a telephonic case management conference for April 9, 2024 at  
4 2:00pm. The Court further **DIRECTS** the parties to submit a joint case management statement by  
5 April 2, 2024. All counsel shall use the following dial-in information to access the call:

6 Dial-in: 888-808-6929

7 Passcode: 6064255

8 For call clarity, parties shall NOT use speaker phone or earpieces for these calls, and where  
9 at all possible, parties shall use landlines. All attorneys appearing for a telephonic case  
10 management conference are required to dial in at least 15 minutes before the hearing to check in  
11 with the CRD. The parties should be prepared to discuss how to move this case forward  
12 efficiently.

13 **IT IS SO ORDERED.**

14 Dated: 3/21/2024

15   
16 HAYWOOD S. GILLIAM, JR.  
17 United States District Judge